IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1140 of 1999

For Approval and Signature:
HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HADIYABHAI DITABHAI MOHNIYA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR BS SUPEHIA for the Appellant.
MS. FALGUNI PATEL, APP, for the Respondent.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 11/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellant came to be tried by Sessions Court, Baroda, in Sessions Case No.78 of 1999, for the offences punishable under Sections 363, 366, 376, 302 and 201 of the Indian Penal Code. The case against him was that he kidnapped minor-Sharadaben under the pretext of taking her to her maternal uncle's place from her house at Gayatri, behind “D” Cabin, Bajwa, Vadodara, on 13th October, 1998, at about 15.00 hours. The appellant was seen taking away Sharada by a number of witnesses. Thereafter, the appellant and Sharada both disappeared. Parents of Sharada, on returning from their work place, found that Sharada was not at home and did not return till evening. They started looking for her. Having lost patience, they telephoned mother of first informant, Maniabhai, at Dahod saying that the accused had taken away Sharadaben and they are not traceable. She, therefore, looked for the accused and the minior at Dahod, but, as she did not find them, she also informed police just as Maniabhai informed Jawaharnagar Police. On 29th October, 1998, Champakbhai Mohanbhai Patel went to his field and smelt some foul smell coming from the grass that had grown near the hedge of his field and, on examining the place, he found dead body of a girl with maggots. There were bangles in her hand and the dead body was in a badly degenerated form. Only what was left were bones or skeleton. There were three other persons with him at that time. All of them went to Jerod Police and informed about the same. In the meantime, Jawaharnagar Police came and the place was seen. What was found were bones, pieces of the frock worn by the

deceased, pieces of bangles worn by the deceased and the undergarment of the deceased. The police sent the bones to Forensic Science Laboratory (FSL) for determination of age and sex of the person whose bones were found. It was opined by the FSL that it was of a person aged about 11 to 14 years, but sex could be determined. The appellant came to be arrested from Dahod and was interrogated. On his disclosure, he was taken to the place of incident where a Panchnama was drawn, but, before that, the police was taken by him to various places, on the previous day. On the previous day, at the end of the day, the police and the appellant halted at Yuvraj Hotel, Ranoli, where the appellant attempted to commit suicide, for which an offence was registered against him under Section 309 of the I. P. C. and then he made disclosure, on the basis of which a Panchnama of place was drawn. Ultimately, charge sheet came to be filed in the Court of learned Judicial Magistrate, First Class, who, in turn, committed the case to the Court of Sessions.

1.1 The Sessions Court framed charge at Exhibit 3, to which the accused pleased not guilty and came to be tried. The Trial Court, after considering the evidence adduced by the prosecution, came to a conclusion that the prosecution was not successful in establishing charge of rape punishable under Section 376 of I. P. C. and acquitted the accused of that offence. However, the Trial Court found that the offence of kidnapping punishable under Section 363 was duly proved and, therefore, convicted the appellant therefor and sentenced him to undergo rigorous imprisonment for three

years and to pay a fine of Rs.500/- and, in default, to undergo simple imprisonment for seven days. The Trial Court also found that the offence of kidnapping punishable under Section 366 of I. P. C. was also proved and, therefore, convicted the appellant therefor and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/ and, in default, to undergo simple imprisonment for fifteen days. It was also concluded by the Trial Court that the accused was proved to have committed murder of Sharadaben and, therefore, sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- and, in default, to undergo rigorous imprisonment for a period of one year. For the offence of destruction of evidence punishable under Section 201 of I. P. C., the appellant was convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.200/- and, in default, to undergo simple imprisonment for seven days. Aggrieved by the said judgment and order, present appeal is preferred.

2. We have heard learned Advocate, Mr. Supehia, for the appellant and learned Additional Public Prosecutor, Ms. Patel, for the State.

3. Mr. Supehia submitted that the Trial Court committed an error in convicting the appellant for the offences punishable under Sections 366, 302 and 201 of I. P. C. He submitted that the evidence, which is recorded, is only of witnesses who have seen the deceased and the appellant leaving together on a bicycle. There is no evidence to show that the kidnapping was done to force the

deceased to any illicit intercourse or to expose her to likelihood of such illicit intercourse. Mr. Supehia submitted that even for murder, there is no evidence. There is no evidence to conclusively prove that the pieces of dead body, which were found, were that of the deceased-Sharada and, therefore, conviction for her murder is ill-founded. The evidence led by the prosecution is inconsistent and faulty. Witness-Champaklal has seen the dead body with maggots, whereas the Panchnama of the place of incident wherefrom pieces of dead body were found does not speak of any maggots. The evidence regarding leaving of bicycle and recovery thereof is also doubtful. The bicycle is not shown to any of the witnesses, but claimed to have seen the deceased being taken away by the accused on a bicycle. He, therefore, submitted that, at the most, the Trial Court could have convicted the appellant only for an offence punishable under Section 363 of I.P.C. He, therefore, submitted that convictions under Sections 366, 302 and 201 by the Trial Court may be set aside by partly allowing the appeal.

4. Learned Additional Public Prosecutor, Ms. Patel, has opposed this appeal. According to her, the charge of Sections 366 and 363 is properly proved by the prosecution. What could be the intention of a man who entices away a young girl aged about 11 years to a remote place in the outskirts of a village and who is later on found to be dead? According to her, when kidnapping is proved, the purpose of kidnapping gets proved through the conduct of the accused and, therefore, the Trial Court was also justified in recording conviction under Section 366. She submitted that the identity of the dead body is fixed through the clothes and bangles

of the deceased, which are identified by the parents. The conduct of the appellant after the incident is also very relevant. After kidnapping the girl from Baroda, he was not seen and then was found at a later point of time from Dahod and, on inquiries being made, he indicated that he had left the victim at some Patel's house and then took the people for a ride for the whole day from one place to another. The accused thereby tried to dodge the search of the dead body. On the next morning, he tried to commit suicide for which he is being prosecuted and then, when a point came where he had no alternative but to indicate the place, he indicated the place whereafter the dead body, etc. was found. She, therefore, submitted that the trial Court has rightly held that the charge of murder is proved against the appellant so also the charge of destruction of evidence and the appeal may, therefore, be dismissed.

5. We have examined the record and proceedings keeping in light the submissions made by rival sides. Upon reading evidence of (1) P.W.3-Binduben Kanjibhai Dabhi (Exhibit 11), (2) P.W.4-Radhaben Shanabhai (Exhibit 12), (3) P.W.5-Sapandas Satishdas (Exhibit 13), (4) P.W.6-Jasodaben Rameshbhai Pandya (Exhibit 14), (5) P.W.9-Raijibhai Keshahai Rathodiya (Exhibit 30), (6) P.W.10-Ukadbhai Laxmanbhai Vasava (Exhibit 32) and (6) P.W.11-Parbatbhai Vajabhai Vasava (Exhibit 33), it is clear that the appellant was frequently visiting the house of the deceased and, on the day of the incident, he visited the house of the deceased and, around 3.00 P.M., he left on a bicycle along with the victim. These witnesses have seen the appellant actually taking away the

deceased with him under a pretext of taking her to the house of her maternal uncle. He has been noticed leaving with the deceased at various places. These witnesses have been tested on the touchstone of cross-examination, but we do not find any material to doubt their depositions nor is any material indicated by learned Advocate, Mr. Supehia, to render their depositions susceptible to doubt. These witnesses, in terms, have established the fact that the appellant took away the deceased (minor-Sharada) with him on the bicycle when her parents were not at home. In our opinion, therefore, the offence of kidnapping is properly held to have been proved.

6. So far as the offence punishable under Section 366 is concerned, the intention of the accused has to be read from his conduct. In the instant case, the appellant took away a minor girl with him when her parents awere not at home under a pretext of taking her to her maternal uncle's place and when it is found that he has never taken her to her maternal uncle's place, but had taken her to the outskirts of the village and when it is found that the deceased was done to death, obviously, there could not have been any other intention but to subject the deceased to seduction for illicit intercourse. It is nobody's case that the victim belonged to a rich family or that she was loaded with valuables and, therefore, there cannot be any other inference than the one which is drawn by the Trial Court, though not properly formulated in the judgment. In our opinion, therefore, the conviction of the appellant by the Trial Court under Section 366 is also justified.

7. So far as conviction under Section 302 is concerned, it has been vehemently argued that identity of dead body has not been properly established and when the F.S.L. expert was not in a position to opine whether it was dead body of a male or a female, how could Champakbhai have said that the dead body which he had noticed was that of a girl. The contention cannot be accepted for the reason that when Champakbhai noticed the dead body, he saw pieces of frock which was worn by the deceased, the undergarment of the deceased and pieces of bangles and, therefore, when he says that he saw the dead body of a girl, he was fully justified in making such a statement by drawing an inference. The inference was legitimate. Only piece or pieces of bones were sent to F.S.L. expert for examination and on that basis, the expert could not have opined whether they were the bones of a male or a female person. But Champaklal had an added advantage of noticing the frock, undergarment and the pieces of bangles to decide that the dead body was that of a girl. Therefore, the dead body has rightly been identified to be that of a girl. The clothes and the pieces of bangles have been identified by the father of the victim, who said that the clothes and the bangles were worn by the deceased on the fateful day. The identify of the deceased is, therefore, properly established.

7.1 It was contended that, according to Champaklal, he noticed maggots in the dead body whereas there is no reference to it in the Panchnama of the place of incident, which has been pointed out by the accused-appellant. This discrepancy cannot be given much weightage for the reason that the dead body, as such,

was not a dead body, but were pieces of dead body which were scattered over an area of about 50 feet radius. The dead body was probably eaten away by wild animals.

8. It has come in evidence of the Investigating Officer that the place of incident was discovered by the appellant and a Panchnama in this regard was drawn. It is contended by learned Advocate for the appellant that this Panchnama cannot be considered as a Panchnama under Section 27 of the Evidence Act and, in our opinion, he is right for the reason that the dead body was already noticed by witness-Champakbhai. But, even if we accept this contention and do not treat this Panchnama (Exhibit 37) as one under section 27 of the Evidence Act, then also, the fact remains that the place wherefrom the dead body was found was pointed out by the appellant and therefrom pieces of dead body, pieces of bangles, frock worn by the deceased and her undergarment have been recovered.

9. It has also come in evidence of the Investigating Officer that, on being asked about the deceased, the appellant told that the girl is left by him at the house of some Patel and then the accused took them to different places under the pretext of showing that Patel's house, but in vain and since it was dark, they halted at Yuvraj Hotel, Ranoli, where the appellant tried to commit suicide. This conduct on the part of the appellant also reflects heavily on his conduct after the incident, particularly, when, at a later point of time, he pointed out the place wherefrom the dead body is found.

10. In our view, when the prosecution has established the fact that the accused-appellant took away the minor victim from her place in absence of her parents on his bicycle under the pretext of taking her to her maternal uncle's place; when it is found that the appellant did not take her to her maternal uncle's house; when, thereafter, the victim and the appellant were both not traceable; when the appellant tried to dodge the police in locating the girl; when upon pointing out by the appellant the dead body is found; when the dead body is identified by relatives of the deceased with the help of clothes and bangles worn by the deceased, we are of the view that the prosecution was successful in establishing a complete chain of events to connect the appellant with the crime.

10.1 We may add that it is nobody's case that any other minor girl was missing around the time and in the area. When the clothes have been identified by the parents, we are of the view that the dead body which was found in an unidentifiable condition was that of deceased-Sharada, who was last seen in company of the appellant. We are, therefore, of the view that the Trial Court was justified in recording conviction of the appellant, as stated above.

11. There appears no merit in the appeal. The appeal must fail and stands dismissed. Judgment and order of conviction and sentence rendered by the Trial Court is hereby confirmed.

[A. L. DAVE, J.]

[S. D. DAVE, J.]

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